THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.18567 of 2006

Dated : 27.04.2007

Between:

Yeripalli Ramulamma W/o Satyanarayana

…**PETITIONER**

And:

The District Collector, Visakhapatnam District,
Visakhapatnam and others.

… **RESPONDENTS**

THE HON'BLE SRI JUSTICE V.V.S.RAO
WRIT PETITION No.18567of 2006

ORDER:

Petitioner contested as a member of Ward No.8 of Z.Chintuva Gram Panchayat of Ramballi Mandal in Visakhapatnam District. The election was conducted on 02.08.2006. The petitioner alleges that she secured ninety six votes, whereas the fifth respondent got ninety three votes, that the Returning Officer issued "return of election" in Form No.XXVIII under Rule 62(1)(b) of the Andhra Pradesh Panchayat Raj (Conduct of Elections) Rules, 2006 (for short "the Rules"), declaring her as elected, and that in spite of the same, she is not being allowed to represent Ward No.8, but the fifth respondent is permitted to represent Ward No.8. Therefore, she filed the instant writ petition seeking a direction to respondents 1 to 4 to consider her as elected member of Ward No.8.

Rules 62 to 64 of the Rules, promulgated vide G.O.Ms.No.142 Panchayat Raj & Rural Development (Ele.) Department, dated 03.05.2006 read as under:

> **62. Declaration of result of election and return of election**:- (1) The Returning Officer shall subject to the provisions of Rule 61 in so far as they apply to any particular

case –

(a) declare in Form-XXVII the candidate to whom the largest number of valid votes have been given to be elected for the seat and send signed copies thereof to the State Election Commission, Election Authority and District Election Authority.

(b) complete and certify the return of election in Form-XXVIII and send copies thereof to the State Election Commission, Election Authority and District Election Authority.

(2) Any candidate or his agent shall, on application be permitted to take a copy of an extract of the return of election in Form-XXVIII.

63. Grant of Election Certificate:- As soon as may be after a candidate has been declared by the Returning Officer under Rule 16 or, as the case may be, under Rule 62 to have been elected, the Returning Officer shall grant such candidate a certificate of election in Form XXIX and obtain from the candidate an acknowledgement of its receipt duly signed by him immediately.

64. Publication of Results:- The Returning Officer shall publish on the notice board in the Office of the Gram Panchayat/ Mandal Parishad/Zilla Parishad concerned a notification signed by him, stating the names of the candidates duly elected.

As seen from the above, Rule 62 refers to Form Nos.XXVII and XXVIII, whereas Rule 63 refers to Form No.XXIX. These Forms are appended to the Rules. They read as under:

FROM-XXVII

(See Rule 62(1)(a))

(for use in election when the seat is contested)

Declaration of result of election

In accordance with Rule 62(1)(a) of Andhra Pradesh Panchayat Raj (Conduct of Election)Rules, 2006, I declare that the following candidate has been elected to the office of Sarpanch/Member of Ward No. ……. of …… Gram Panchayat / Member of ……..... Territorial Constituency of …….. Mandal Parishad/Zilla Parishad.

Name :
Address:
* Party affiliation, if any:
Place :
Date :

Signature of Returning Officer

FORM-XXVIII

(See Rule 62(1)(b))

RETURN OF ELECTION

Election to the Sarpanch/Member of Ward No……. of …… Gram Panchayat/Member…….Terrirorial Constituency of ……..Mandal Parishad Zilla Parishad.

Serial No.	Name of the Candidate	*Party affiliation, if any	Number of votes polled

(Total number of electors…….)
Total number of valid votes polled…….
Total number of rejected votes……..
Total number of tendered votes…….
I declare that—
……. (Name)
of…….(address)
has been duly elected to fill the seat.
Place……
Dated……..

Returning Officer

FORM-XXIX
(See Rule 63)
CERTIFICATE OF ELECTION

I, Returning Officer for the election to the Sarpanch/Member of Ward no…… o f … … … … … … … … . G r a m Panchayat/Member,.. ……. Territorial Constituency of …….. Mandal Parishad/Zilla Parishad hereby certify that I have on the …….Day of…….2006 declared Shri/Smt/Kum ……. of sponsored by …….. (name of the recognized/registered political party) to have been duly elected to the said office in the ordinary/casual election and that in token thereof I have granted to him this certificate of election.
Place:
Date :

Returning Officer

The conspectus of these Rules and the Forms extracted hereinabove is as follows. After completing the counting in accordance with Rules 56 to 61 of the Rules, the Returning Officer shall have to declare in Form No.XXVII the candidate to whom the largest number of valid votes have been given. The next step is to complete and certify the return of election in Form No.XXVIII, and a candidate or his agent shall be permitted to take a copy of the extract

of return of election. Then comes Rule 63 of the Rules, which requires the Returning Officer to grant a certificate in Form No.XXIX to a candidate who has been declared elected in Form No.XXVII under Rule 62(1)(a). Therefore, the certification i.e, the return of election in Form No.XXVIII is not the conclusive proof of declaration of the candidate nor amounts to the certificate under Rule 63 of the Rules. The candidate, who is given a declaration in Form No.XXVII and the certificate in Form No.XXIX is only deemed to be elected in the election. In this case, the petitioner produced the election return in Form No.XXVIII, which is not the conclusive proof of election. This Court, however, hastens to add that if the petitioner has any grievance, her remedy is to file an Election Original Petition under Section 233 of the Andhra Pradesh Panchayat Raj Act, 1994. Hence, the writ petition is not maintainable.

The writ petition, is therefore, dismissed. No costs.

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(V.V.S.RAO, J)

27th April, 2007.

Note: L.R.copy to be marked.

(B/o)

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